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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 150 OF 2014
IN
TESTAMENTARY SUIT NO. 59 OF 2000
IN
TESTAMENTARY PETITION NO. 63 OF 2000

Dipti Mukesh Zaveri	...Applicant
<i>In the matter between</i>	
Smt. Ameeta K. Vora	...Plaintiff
<i>Versus</i>	
Dipti Mukesh Zaveri	...Defendants

Mr. Vikram Sathe, i/b M/s. S.R. Rawall & Co., for the Applicant
Ms. Kavita Shah, for the Plaintiff.

CORAM: G.S. PATEL, J
DATED: 13th March 2015

PC:-

1. An *ex parte* decree was passed on 11th November 2014. The Defendant now seeks by this Motion to have that *ex parte* decree set aside. The Defendants also seeks that her non-appearance before this Court on four occasions on 27th October 2014, 5th November 2014, 7th November 2014 and 11th November 2014 be condoned.

2. In the Affidavit in Support of the Notice of Motion the Defendant points out that she herself is not responsible, since she relied on her Advocate at that time, and her Advocate did not alert to her to the listing of this matter on these dates. An Affidavit of Ms. Vishaki Bhatia, Advocate, has also been filed. There are very many things in Ms. Bhatia's Affidavit that I find unacceptable and inappropriate, but in view of the statement made by learned Counsel for the Defendants today I will not go into these in greater detail. It is sufficient to note that an Affidavit in Reply has been filed controverting the essential contentions of the Defendant and Ms. Bhatia. For our present purposes it is to be noted that it is matter of record, as set out in paragraph 8 of the Affidavit in Reply, that the Defendant has been absent not only on four occasions before me but on two previous occasions when the matter was listed before another Bench. For the non-appearance on these two previous occasions on 3rd July 2014 and 4th August 2014, there is no explanation whatsoever.

3. I am prepared to accept the statement of the Defendant. It cannot be that the Defendant, as a litigant, should be made to suffer or be prejudiced on account of lapses on the part of her Advocate. That there were such lapses and that these were inexcusable is, in my view, apparent from any fair reading of Ms. Bhatia's Affidavit. Indeed, these lapses are even admitted.

4. Ms. Shah, learned Advocate for the Plaintiff, is also justified in her submission that equally the Plaintiff should not be unduly prejudiced and that at the very least the Plaintiff is entitled to an order of costs. In my view Ms. Shah is correct. Ms. Shah, however,

fairly states that she is agreeable if those costs are not paid to the Plaintiff but instead to Maharashtra State Legal Services Authority.

5. Learned Advocate for the Defendant agrees that Ms. Bhatia will personally pay a sum of Rs. 15,000/- to the Maharashtra State Legal Services Authority as a condition precedent on or before 23rd March 2015. On that payment being made and on payment confirmation being communicated to the Prothonotary and Senior Master with a copy to the Advocate for the Plaintiff, the Motion will be stand made absolute in terms of prayer clause (a), (b), (c) and (d) of the present Notice of Motion. The Suit will then to be listed for directions as to the cross-examination. If costs are not paid as directed, the Notice of Motion will stand dismissed without further reference to the Court.

6. Suit to be listed for directions on 30th March 2015.

(G. S. PATEL, J.)